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In Re Application of
KERN et al.
Application No.: 10/528,803
PCT No.: PCT/EP03/03851
Int. Filing Date: 14 April 2003
Priority Date: 12 October 2002
Attorney Docket No.: 123295
For: ELECTRONIC DISPLAY AND CONTROL DEVICE:
FOR A MEASURING DEVICE

DECISION

This is a decision on applicant's PETITION UNDER 37 CFR 1.181, Request for Corrected Filing Receipt and corrected Notice of Acceptance filed in the United States Patent and Trademark Office (USPTO) on 23 May 2006.

On 14 April 2003, applicant filed international application No. PCT/EP03/03851 which claimed a priority date of 12 October 2002 and which designated the United States. Thereafter, on 23 March 2005, before the expiration of the thirty month period, applicant filed, *inter alia*, a transmittal letter for entry into the national stage and the basic national stage filing fee. On 07 April 2005, applicant filed an executed declaration.

On 22 July 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 07 September 2005, applicant filed a Response to the Notification of Missing Requirements indicating that the declaration was filed on 07 April 2005; however, applicant did not include proof of the filing with submission of USPTO date-stamped itemized postcard receipt.

On 30 March 2006, a Notification of Acceptance Under 35 U.S.C. 371 and 37 CFR 1.495 (Form PCT/DO/EO/903) was mailed a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 07 September 2005.

On 6 December 2005, applicant refiled the declaration along with a USPTO itemized postcard receipt with a date-stamped of 7 April 2005.

On 23 May 2006, applicant filed the instant submission. Applicant urges that the Form PCT/DO/EO/903 be vacated and that a new Notification of Acceptance be issued indicating a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 07 April 2005.

DISCUSSION

The original declaration allegedly filed in the USPTO on 07 April 2005 is not located in the application file.

As stated in section 503 of the Manual of Patent Examining Procedure (Rev. 2, May 2004)(MPEP):

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

A review of the USPTO date-stamped, itemized postcard receipt indicates that a declaration and a general power of attorney were deposited with the USPTO on 07 April 2005 in response to the Notification of Missing Requirements.

The evidence submitted is sufficient to establish that a declaration for this application was, in fact, received in the USPTO on 07 April 2005. The communication filed 23 May 2006 includes a copy of the executed declaration. Accordingly, it is appropriate to accept the copy of the declaration as a replacement for the missing original declaration with a deposit date of 07 April 2005. The evidence submitted by applicant, the postcard receipt date stamped by the USPTO, is sufficient to overcome the *prima facie* evidence of the application file itself.

A review of the declaration reveals that the declaration identifies the inventor, and states the citizenship and mailing address of the inventor. Thus, the declaration is acceptable and the requirements of 37 CFR 1.497 are met.

CONCLUSION

The petition under 37 CFR 1.181 is GRANTED.

The copy of the declaration originally submitted on 07 April 2005 and resubmitted 23 May 2006 is acceptable and meets the requirements of 37 CFR 1.497(a) & (b).

The application will be forwarded to the United States Designated/Elected Office for further processing in accordance with this decision, including issuance of a new Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt. The 35 U.S.C. 371(c)(1), (c)(2) & (c)(4) date is **07 April 2005**.


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